THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on :01.02.2007

WP(C) No.11615/2006

BHUPINDER SINGH ...Petitioner

- versus -

DELHI COMMISSION FOR WOMEN & ORS ...Respondents

Advocates who appeared in this case:

For the Petitioner : Mr K. P. Mavi
For the Respondent No.1 : Ms Veena Goswami
For the Respondent No.2 : Mr Gaurav Sarin
For the Respondent No.3 : Mr Kapil Jain

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? YES

2. To be referred to the Reporter or not? YES

3. Whether the judgment should be reported in Digest? YES

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against the letter dated 03.07.2006 issued by a member of the Delhi Commission for Women to the Accounts Officer, MTNL, Telephone Exchange, 4th Floor Hari Nagar, New Delhi. The subject of the letter is interim maintenance. It appears that a complaint was filed with the Delhi Commission for Women by the respondent No.3, who is the wife of the petitioner. The petitioner is an employee of MTNL. As per the respondent No.3's case, she

and her two minor children are living along with her aged mother and her husband (the petitioner) was not maintaining her for the last five years. On the basis of this submission, the Commission, by virtue of the impugned letter made the following instruction:-

> "The Commission has granted Smt. Sonia interim maintenance of Rs.6000/- (Rupees six thousand only) per month, considering her miserable condition till such time she gets an order from the Court. This amount be deducted from Sh. Bhupinder Singh's salary before 5th of every month and may send directly to Smt. Sonia and inform the Commission on the action taken on this."

2. The petitioner submits that such an instruction/direction issued by the Delhi Commission for Women is wholly without jurisdiction and the Commission does not have any power to pass an order on interim maintenance. The learned counsel for the petitioner submitted that if such a direction/instruction is permitted to run its course then it would amount to supplanting the Commission over the Courts. He submitted that the rights and obligations with regard to maintenance of the petitioner and the respondent No.3 are governed by the Hindu Adoption and Maintenance Act, 1956 and, in case of emergent situations, under Section 125 of the Code of Criminal Procedure, 1973. He further submits that the respondent No.3 has already filed an application under Section 125 of the Code of Criminal Procedure, 1973 and the same is pending before the Metropolitan Magistrate, Rohini Courts. It is further submitted that in that matter, an application for interim maintenance has also been moved and that has been receiving consideration from

the court. He, therefore, submits that in these circumstances this letter whereby the MTNL has been directed to deduct an amount of Rs.6,000/- each month from the salary of the petitioner and to send the deducted amount directly to the respondent No.3, is entirely without jurisdiction and is liable to be set aside.

3. In response, the respondent No. 1 (the Delhi Commission for Women) has filed an affidavit and the relevant portion of the affidavit reads as under:-

> "8. That it is pertinent to mention that in the petitions for maintenance under Section 125 Code of Criminal Procedure being heard in the court of concerned Metropolitan Magistrate, Rohini Courts Delhi, for Rohini Police Station even a notice of the petition on 1.7.2006 was being issued to the respondent for 14.05.2007 which clearly shows more than 10-1/2 months adjournment was being given while the need of maintenance is always an urgent for which reason the deponent was forced to write a letter to the department of petitioner. As such no order for maintenance was passed by respondent No.1 it was only in the peculiar circumstances of the subject matter, the letter was written by the deponent in order to help the respondent no. 3 who is in miserable condition, already being widow at the time of marriage to the petitioner having a child from her first marriage and staying with her old aged mother without any source of income.
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> 9. That the deponent had not intentionally defied any provision of law. It is pertinent to mention that although even the direction was made on 30.06.2006 and according to the petitioner, he came to know about the letter dated 3.7.2006 and 13.07.2006, the petitioner never asked for the review of the direction on any of the following date of his appearance before respondent No.1. It seems the petitioner himself thought the amount of Rs.6,000/- per month normal for his child and wife as his salary is more than Rs.25,000/- per month besides other benefits like medical, LTC, etc. while the respondent no.3 has no source of income, but as an after thought, the petitioner

filed the present writ petition."

The learned counsel appearing for the respondent No.1 submitted that this letter is not actually in the form of an order and was issued in exceptional circumstances in the sense that the respondent No.3's condition was found to be quite miserable.

4. The learned counsel appearing on behalf of the respondent No.3 submitted that the grievance of the respondent No.3 is that no maintenance was being provided by the petitioner.

5. After considering the aforesaid submissions made by the counsel for the parties, I am of the view that the Delhi Commission for Women had no power under the Delhi Commission for Women Act, 1994 for issuing such a direction. An examination of the Statement of Objects and Reasons of the said Act would indicate that the main task of the Commission is to study and monitor all matters relating to the constitutional and legal safeguards provided for women, to review the existing legislations and suggest amendments wherever necessary. The Commission for Women is also required to look into the complaints and take suo moto notice of the cases involving deprivation of the rights of women in order to provide support, legal or otherwise, to helpless women. The Commission is also required to monitor the proper implementation of all the legislations made to protect the rights of women so as to enable them to achieve equality in all spheres of life and equal participation in the development of the nation. Section 10 of the said

Act describes the functions of the Commission. While it is true that the Commission by virtue of Section 10(3) has been vested with all the powers of a civil court in carrying out an investigation with regard to the matters relating to safeguards provided for women under the constitution and other laws as also with regard to the matters relating to deprivation of women's rights, there is, however, no power granted to the Commission to pass orders and or directions for maintenance. These powers are vested in the courts, both civil and criminal. The rights and obligations in respect of maintenance pertaining to parties, who are Hindus, are to be determined under the Hindu Maintenance and Adoption Act, 1956. Such matters are to be adjudicated by a civil court. Recognizing the fact that such an adjudication may take some time, the legislature has enacted Section 125 of the Code of Criminal Procedure, 1973 to provide immediate relief to such persons who deserve maintenance as an interim measure till the civil court decides the entire disputes with regard to maintenance.

6. In the present case it is an admitted fact that proceedings under Section 125 of the Code of Criminal Procedure, 1973 are pending and even an application for interim maintenance has been filed on behalf of the respondent No.3. I am informed that the next date of hearing before the learned Metropolitan Magistrate is 05.04.2007. Since it is the case of the respondent No.3, that the situation with

regard to the maintenance is quite emergent, both parties are agreed that on the respondent No.3 moving an application for early hearing of the interim maintenance application, the petitioner shall not oppose such an application for early hearing. And, it is expected that the learned Metropolitan Magistrate shall take up the hearing of the application for interim maintenance at the earliest because that is the requirement of the provisions of law.

7. With these observations, the impugned letter dated 03.07.2006 is set aside. This petition stands disposed of. The learned counsel for the respondent No.3 submits that the application for early hearing would be moved within two days. Upon the making of such application, it is hoped that the court shall take up the matter of interim maintenance and shall dispose of the same promptly.

BADAR DURREZ AHMED
(JUDGE)

February 01, 2007
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